

STATE OF VERMONT
HUMAN SERVICES BOARD

In re)	Fair Hearing No. 15,937
)	
Appeal of)	
)	

INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying her eligibility for the Vermont Health Access Plan (VHAP) because she was determined not to have been a resident of the state of Vermont for the last twelve months.

FINDINGS OF FACT

1. The petitioner is a sixty-year-old woman who applied for VHAP benefits in February of 1999. As part of her application she wrote a statement in which she explained that "she hadn't had a permanent residence for several years" because she earns her "money by living in with an elderly person." She also stated that she was not currently "living in" Vermont but in New Hampshire because she had to stay nights with an elderly lady. Based on these statements, the Department determined that she was not now and had not been a resident of Vermont for the twelve months prior to her application and denied her VHAP benefits.

2. The petitioner appealed that decision because she feels that she is a resident of Vermont. She was born and raised in southeastern Vermont and graduated from high school there. In turn she raised her own children in

Vermont and they all continue to live in the Brattleboro area, as do her siblings and grandchildren. The petitioner has only left this area for a five year period when she worked as a missionary in the Philippines. The petitioner had her own home until 1987 at which time she moved in with her daughter. She considers her daughter's home her regular home and gives that address to correspondents.¹ She is an active member of a Vermont church, uses a Vermont bank for her checking account, has a driver's license in Vermont, and is on the voter checklist in Brattleboro.

3. For many years, the petitioner has worked as a paid home companion for elderly, sick persons who cannot live alone. She earns on average about \$6,000 per year. All of her jobs have been in southeastern Vermont with the exception of her most recent job which involves caring for an elderly woman who has Alzheimer's disease and who lives in a New Hampshire community across the river from Brattleboro. As part of her job, the petitioner is required to spend the majority of nights in the house with her patient. She has a room of her own in the elderly woman's house and has been doing this job for about three and a half years. During the day she is often free to leave her patient and spends most of that time in Vermont running errands, visiting family and attending church functions. On

¹ The petitioner gave the Brattleboro address as her residence for purposes of this application and appeal. All notices have been mailed to the Brattleboro address.

her day off, she always returns to her daughter's home. When she is between companion jobs she lives in her daughter's home and expects to return there when this job is finished.

4. The petitioner has not sought any benefits in New Hampshire and has never declared herself to be a resident of that state for any purpose. She does at time receive some mail at her patient's home address. The only reason she goes to New Hampshire is to work, and she argues that many people work in New Hampshire during the day and are still considered Vermont residents. She feels she should not be treated differently because she works in New Hampshire at night.

ORDER

The decision of the Department is reversed.

REASONS

The regulations governing the VHAP program require a twelve-month period of state residency for eligibility:

State Residence

An individual is a state resident if he/she has lived in Vermont during the entire 12-month period immediately preceding application for the VHAP program and is living in Vermont at the time of such application:

(a) with intent to remain permanently or for an indefinite period of time; or

Note: To meet this 12-month provision, a

student must have maintained and occupied a domicile in Vermont during all school vacations for a 12-month period and intend to remain in Vermont following graduation in order to be considered a Vermont resident.

(b) while incapable of stating intent.

Temporary absence from Vermont for any of the following purposes does not interrupt or end Vermont residence: visiting, obtaining necessary medical care, or obtaining education or training under a program of vocational rehabilitation or higher education.

VHAP 4001.4

The Department takes the position that the words "living in" found in the regulation mean having a physical presence in Vermont, which it maintains the petitioner does not have. The regulation itself does not specifically use the term physical presence² but assuming arguendo that the Department is correct, it is clear from the above facts that the petitioner is physically present in the state of Vermont for significant periods of time every week. In fact, she is present in Vermont almost all of the time when she is not

² For purposes of comparison, the statutory definition of "resident" for purposes of voting in Vermont is as follows:

"Resident" means a natural person who is domiciled in this state as evidenced by an intent to maintain a principal dwelling place in the state indefinitely and to return there if temporarily absent, coupled with an act or acts consistent with that intent.

17 V.S.A. § 2103(30)

Like the Department's regulation, this statute does not mention "physical presence". It uses the word "domicile", instead of "living in", and defines that word in terms of intent to maintain a principal dwelling place.

working.

That regular, if part-time, physical presence is combined with facts that amply demonstrate the petitioner has a significant attachment to the state. Her address, driver's license, and voter registration are in this state and have been for many, many years. In addition, she returns to her daughter's home in Vermont when she is not working and does not maintain a home in any other state. These factors are strong indicators of her intent to be a Vermont resident and, in fact, would probably prevent her from claiming residence in New Hampshire.

It should be noted as well that the above regulation clearly contemplates that persons could leave the state temporarily for significant periods or time and still be considered residents. Although the absence exceptions set out in the regulation do not mention working outside of the state, the language is a strong indication that the wording used in the regulation was not meant to require continuous presence in order to find that a person is a "resident" of this state.

There is no indication here that the petitioner has been anything but honest about this matter, as she brought this situation to the Department's attention. There is no evidence that she is attempting to fraudulently establish residency in this state. Her denial occurred because of an inaccurate view of the facts (that she has no physical

presence here) and a misinterpretation of the residency regulation (that it requires continuous physical presence).

As the regulation does not contemplate such a rigid view of residency as put forth by the Department and as the facts indicate that the petitioner has a genuine and long-standing attachment to this state, the Department's decision is reversed as not consistent with its regulation or with the stated purpose of the program to assist uninsured low-income Vermonsters. See VHAP 4000.

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